



AAJ
JFW

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)
Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

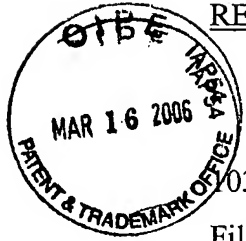
PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) NAI1P055/01.228.01	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on <u>March 13, 2006</u></p> <p>Signature <u></u></p> <p>Typed or printed name <u>Erica L. Farlow</u></p>		Application Number 10/028,651	Filed 12/20/2001
		First Named Inventor Lee Codel Lawson Tarbotton et al.	
		Art Unit 2137	Examiner Pyzocha, M.
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. 41,429 Registration number _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

Signature
Kevin J. Zilka
Typed or printed name
(408) 971-2573
Telephone number
3/13/06
Date

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

REMARKS



The Examiner has rejected Claims 1-7, 9-20, 22-28 and 30-31 under 35 U.S.C. 103(a) as being unpatentable over "Q222193-Description of the Windows 2000 Windows File Protection Feature" (WFP) in view of Rickey et al. (U.S. Patent Application Publication No. 2002/0166059). Applicant respectfully disagrees with such rejection.

With respect to independent Claims 1, 14 and 27, and specifically applicant's claimed technique "wherein the factors are altered based on the monitoring of the requests to write to the files on the computer," the Examiner has responded to applicant's arguments by stating that "when WFP is monitoring for modifications to files the write request is part of the change and therefore part of the monitoring." First, applicant respectfully asserts that what is claimed is "factors [that] are altered based on the monitoring of the requests" (emphasis added), and not merely monitoring write requests, as the Examiner has argued. Applicant emphasizes that WFP teaches that the "Windows File Protection feature is implemented when it is notified that a file in a protected folder is modified" and that a "second protection mechanism [is]...the System File Checker tool [that] scans all protected files to ensure they are not modified." Thus, WFP only discloses a situation where it is determined if a file has already been modified, and not altering factors "based on the monitoring of the requests," as claimed by applicant (emphasis added). Furthermore, WFP discloses restoring a file to a correct Microsoft version, but not altering factors associated with the computer, in the manner claimed by applicant.

Second, applicant respectfully disagrees with the Examiner's argument that "each time a file [is] written (i.e. modified) a write request occurs" such that "the write request [which is] part of the change... [is] therefore part of the monitoring." Specifically, WFP only teaches that the "Windows File Protection feature is implemented when it is notified that a file in a protected folder is modified" and that "[o]nce the notification is received, the Windows File Protection feature determines which file was changed" (emphasis added). Thus, in WFP the monitoring is performed with respect to when an actual

modification has already been made, and not to when a request to write to the files on the computer is made, in the manner claimed by applicant. To emphasize, applicant claims altering factors based on a request, and not merely a file modification that has already been made, as in WFP. As such, applicant's claim language allows for the "writes to the files on the computer" to be prevented such that the modification is not made.

With respect to independent Claim 28, and specifically applicant's claimed technique "wherein the at least one of critical files and critical file locations are looked up based on requests to write to the at least one of critical files and critical file locations on the computer" (emphasis added), applicant respectfully asserts that such claim language is also not met by the references relied on by the Examiner in view of the arguments made above with respect to the remaining independent claims.

Still with respect to independent Claims 1, 14 and 27, and specifically applicant's claimed technique "wherein the factors are updated based on the requests," the Examiner has responded to applicant's arguments by stating that in WFP "when a file is changed to an incorrect version, WFP replaces the file with the correct version, which is both altering and updating." Applicant respectfully asserts that WFP only teaches responding to the actual modifications of files, and not to "update[ing] based on the requests," as claimed by applicant (emphasis added). In addition, applicant claims that "the factors are updated" (emphasis added), and not merely that the file is replaced, as in WFP.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Applicant further notes that the prior art is also deficient with respect to the dependent claims. Just by way of example, with respect to Claim 3 et al., and specifically applicant's claimed technique "wherein the factors are user configurable," the Examiner has responded to applicant's arguments by stating that "at the bottom of page 1 WFP teaches that a user can allow a file to be updated and therefore the [user] configures a factor." Applicant respectfully disagrees. The bottom of page 1 in WFP only discloses that the Windows File Protection feature is notified of a file modification and that the Windows File Protection feature looks up the file signature in a catalog to determine if a new file is the correct Microsoft version. Thus, in WFP only the Windows File Protection feature allows files to be updated, which clearly does not meet applicant's claimed "factors [that] are user configurable" (emphasis added). Applicant also notes that the only mention of users in WFP discloses that an "administrator [has] the ability to scan all protected files to verify their versions" and that an "administrator [is prompted] to insert the appropriate media to replace the file." Clearly, neither teaching even suggests user configurable factors, in the manner claimed by applicant.

With respect to Claim 8 et al., and specifically applicant's claimed technique "wherein the factors include trusted applications that initiate the requests," as rejected under 35 U.S.C. 103(a) as being unpatentable over WFP in view of Rickey, in further view of Stevens (U.S. Patent Application Publication No. 2002/0133702), the Examiner has responded to applicant's arguments by merely stating that "[a]pplicant's argument with respect to Stevens is moot in view of the [remaining] respons[es]." Applicant respectfully asserts that such rejection is deficient in view of applicant's arguments made hereinabove with respect to each of the Examiner's responses. Thus, applicant again emphasizes that Stevens only teaches determining "that a trusted application is attempting access and then...grant[ing] the requested access," and not that the trusted

applications that initiate the requests “are altered based on the monitoring of the requests” when read in the context of the independent claims (emphasis added).

With respect to Claims 9 and 10 et al., and specifically applicant’s claimed techniques “wherein the factors are updated based on a user request” (Claim 9 et al.) and “wherein the factors are updated from a remote location via a network” (Claim 10 et al.), the Examiner has responded to applicant’s arguments by stating that “when a file is changed to an incorrect version, WFP replaces the file with the correct version, which is both altering and updating.” Applicant again respectfully asserts that WFP only teaches responding to the actual modifications of files, and not to requests, as claimed by applicant (Claim 9 et. al.). In addition, WFP fails to even mention updating factors, as claimed by applicant (Claims 9 and 10 et al.), but instead only discloses replacing files.

Since at least the third element of the *prima facie* case of obviousness has not been met, a notice of allowance or a proper prior art showing of all of the claim limitations, in the context of the remaining elements, is respectfully requested.

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P055/01.228.01).

Respectfully submitted,
Zilka-Kotab, PC.

Kevin J. Zilka
Registration No. 41,429

P.O. Box 721120
San Jose, CA 95172-1120
408-505-5100